

Respondent and its insurance carrier contend Judge Fuller erred. They argue they should only be required to provide claimant with a hook and cable prosthesis as that device is more appropriate for claimant's work activities as a farm hand. They contend they should not be responsible for the ongoing maintenance and repairs of the myoelectric arm that they previously provided to claimant after claimant's authorized physician allegedly mistakenly prescribed such a device. Accordingly, respondent and its insurance carrier request the Board to deny claimant's request for the ongoing maintenance of the myoelectric prosthesis.

Conversely, claimant requests the Board to affirm the Decision. Claimant argues respondent and its insurance carrier should be required to continue providing the myoelectric prosthesis and its repair and maintenance. Claimant contends the myoelectric prosthesis is more functional than the hook and cable and more cosmetically appealing.

The only issue before the Board on this appeal is whether respondent and its insurance carrier should be required to provide claimant with a myoelectric prosthesis, the appropriate protective coverings and their ongoing maintenance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Decision should be affirmed. In addition to those conclusions below, the Board adopts the findings and conclusions set forth by the Judge.

As indicated above, claimant's left arm was amputated below the elbow as the result of an August 3, 1999 work-related accident. The parties stipulated that claimant sustained a 95 percent permanent partial impairment to the left upper extremity as a result of that accident. The nature and extent of claimant's injury and disability is not an issue on this appeal. Likewise, the parties do not challenge the Judge's computation of disability benefits.

The Judge determined that respondent and its insurance carrier were responsible for providing claimant with a myoelectric prosthesis and its ongoing maintenance. The Board agrees.

The Workers Compensation Act provides that employers must provide injured workers with the medical treatment and apparatus that are reasonably necessary to cure and relieve the employee from the effects of an injury. K.S.A. 1999 Supp. 44-510(a) reads:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing,

medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be **reasonably necessary to cure and relieve the employee from the effects of the injury**. (Emphasis added.)

The word "apparatus" includes appliances such as glasses, teeth, and artificial members.¹

According to Ed Gormanson, the certified prosthetist who testified in this claim, the myoelectric prosthesis is better than the hook and cable as the myoelectric prosthesis (1) is not limited to a certain limited sphere in front of the user's face as is the hook and cable, (2) has greater pinch strength, (3) is self-suspending and, therefore, it does not place a force in the opposite armpit as does the hook and cable, (4) does not cause numbness in the opposite arm due to the absence of cables, (5) has a larger opening than the hook and generally allows the user to hold and stabilize items better, and (6) is cosmetically more pleasing. Mr. Gormanson testified that he has fitted other farmers and farm workers with myoelectric devices and those individuals have found the myoelectric limbs to be more functional than a hook and cable. Mr. Gormanson recommended that claimant receive the myoelectric limb.

Respondent and its insurance carrier focus on claimant's work activities in arguing which prosthetic device is more appropriate. But the Act does not restrict the fact finder from considering factors and activities other than an individual's work when considering the effects of an injury and what prosthetic device might be the most appropriate.

Claimant testified how he could change into his hook and cable to perform work that was better suited for that device. Additionally, claimant identified many tasks that he performed at work that he could do better with the myoelectric limb due to its ability to better grasp. Claimant also testified that he preferred the myoelectric limb because of its appearance. The Board notes that the myoelectric hand is better suited for any activities that require gripping, grasping, or more finite hand movement.

Whether a certain type of prosthesis is reasonably necessary to cure and relieve an injury is a question of fact. Under these facts, the Board finds and concludes that the myoelectric prosthesis is reasonably necessary to cure and relieve claimant from the effects of his injury. Accordingly, respondent and its insurance carrier should be required

¹ *Solis v. Brookover Ranch Feedyard, Inc.*, 268 Kan. 750, 755, 999 P.2d 921 (2000).

to provide claimant with the myoelectric limb, the appropriate protective coverings and their ongoing maintenance.

AWARD

WHEREFORE, the Board affirms the October 31, 2001 Decision entered by Judge Fuller.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert A. Levy, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director